BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

I.

JURISDICTION

The jurisdiction of this Court is invoked under Judicial Code, Section 237-b, as amended by the Act of February 13, 1925, and March 8, 1934, 28 U. S. C. 344-b.

The date of the final judgment is June 16, 1943, on which date the Supreme Court of Wisconsin affirmed the judgment against petitioners. No application for rehearing was made.

The nature of the case and the rulings below bring the case within the jurisdictional provisions of Section 237-b, supra. The claims of federal constitutional right were specifically raised and set up at the commencement of the hearing before the Board by motion to dismiss (R. 145) and in the trial court by the petition for review (R. 104). The Board overruled the motion and the trial court denied such claim of federal constitutional right and by its final judgment rendered judgment against said claims (R. 140). The Supreme Court of the State of Wisconsin in its opinion specifically affirmed said denial of petitioners' claimed constitutional rights, and specifically passed adversely upon petitioners' claimed constitutional right, and overruled the same (R. Opinion 4, 20 et seq.).

The federal rights claimed by petitioners are that the Wisconsin Labor Peace Act as interpreted by the Wisconsin Supreme Court, is unconstitutional, as applied to them, in denying them the rights guaranteed by Section 7 of the National Labor Relations Act in preventing them from carrying on their concerted activities to in-

crease the membership in their organization and to make it a more effective bargaining representative of all the production workers whom they represent by virtue of the order of the National Labor Relations Board, and, in preventing them from carrying on their efforts to obtain a closed shop from the employer. Such denials are based upon the interpretation of the Wisconsin Statute, Section 111.06(2)(a)(b), to the effect that they prevent persuasion if objected to and also prevent the demand by a labor organization of the discharge of employees refusing to join the organization. The second claim of denial of federal right is based upon the interpretation by the Supreme Court of Wisconsin of Section 111.04, Statutes of Wisconsin to the effect that the right to refrain from organizational activities created by that section prevents peaceful persuasion if objected to.

The following cases, among others, sustain the jurisdiction of this Court:

Allen-Bradley Local vs. Wis. E. R. B., 315 U. S. 740, 62 Sup. Ct. 820.

Thornhill vs. Ala., 310 U. S. 88, 84 L. Ed. 1093, 60 Sup. Ct. 736.

II.

STATEMENT OF THE CASE

As appears from the petition, supra, petitioners were ordered by the Wisconsin Employment Relations Board to cease and desist from attempting to coerce or intimidate the individual respondents or any of the employees of the Allis-Chalmers Manufacturing Company in the enjoyment of their legal right to select bargaining representatives of their own choosing or to engage in lawful concerted activities or to refrain from such activities by, among other things a continuous solicitation of member-

ship or by any other manner or in any other way and from attempting to induce the Allis-Chalmers Manufacturing Company to interfere with individual respondents in their legal right of collective bargaining or the right to refrain from such activities and were ordered to post notices that they would not attempt to induce the Allis-Chalmers Manufacturing Company to discharge employees failing to join or to maintain membership in the union. This decision and order was affirmed by the trial court (R. 137) and by the Supreme Court of Wisconsin (Opinion end of record). 243 Wis. 33 10 N.W. 2d 197

III.
OPINION BELOW

The opinion of the Supreme Court of Wisconsin holds that the jurisdiction of the Wisconsin Board is sustained by

Hotel and Restaurant Employees, Local 122 vs. W.E.R.B., 315 U. S. 437 and

Allen Bradley, Local vs. W.E.R.B, 315 U. S. 740,

and the limitation of the National Act in Section 10(a) to interstate commerce, and, decides that the orders of the board in no way affected interstate commerce. It holds further that there is no such thing under the National Act as an unfair labor practice by employees, nor a guarantee of the right to refrain from joining or assisting a labor organization and that, hence, the National Board had had no jurisdiction and the State Board did have jurisdiction, and, that there is no conflict between the National Act and the State Act because the State Act adds the right to refrain from such activities to the rights set out in 7 of the National Act, and that silence of the National Act on the right of employees to refrain from joining or assisting labor organizations creates no conflict.

It holds further that the findings of the Board are sustained by the evidence, that, it was the policy of Local 248 to compel all employees to become members of it, and, that to carry out this policy, it carried on a course of coercion and intimidation against respondents, Imp and Bohachef, to compel them to join the union as a condition of retaining their employment and threatened Bohachef with loss of his job, and, that on one occasion a group of union members and officers guarded the exit gates of the plant to compel him by fear of bodily injury and loss of his job to rejoin the union and tried to open the locked door of Imp's car containing Imp and Bohachef and that stones were thrown breaking the rear window of the car and denting its body and thereupon the union demanded the discharge of Imp and Bohachef as disrupters; that, the judgment requires the union to cease and desist from (1) continuously soliciting employees over objection to join the union (3) threatening them with loss of their jobs, and, that, while no case has held (1) an unfair labor practice, it harassed and hindered him in his right not to join the union and that such solicitation tends to provoke breaches of the peace and frustrates the declared purpose of the act to promote industrial peace; that the ban of the judgment against seeking to have the employer discharge Imp and Bohachef is correct because *under the act* an employer may not discharge an employee in the absence of a closed shop contract for refusal to join a union; that, the general ban of coercion and intimidation "by any other manner or in any other way" is not too broad since peaceful persuasion is not banned; that this case involves violence, injury to property and threats thereof and this takes it out of the rule of

Thornhill vs. Ala., 310 U. S. 88,

that when concerted activity is for an *unlawful* purpose the free speech provision affords no protection and

Carpenters Union vs. Ritter, 315 U. S. 722,

inferentially so holds.

ERRORS TO BE ASSIGNED

The Supreme Court of Wisconsin Erred:

1. In holding that the right to refrain from collective activities, set forth in Section 111.04, Wisconsin Statutes, is effective to limit the rights guaranteed by Section 7 of the National Labor Relations Act (29 U.S.C. 157).

2. In holding that the provision of Section 111.06(1)(c), Wisconsin Statutes, providing that an all union agreement is not effective unless entered into after a secret ballot conducted by the State Labor Board at which three quarters or more of the employees in the collective bargaining unit have voted affirmatively, is effective to render efforts of a labor organization, which has been established by the National Labor Relations Board as the sole bargaining representative of all the employees in the unit after majority vote in an industry engaged in interstate commerce, to prevent efforts to obtain an all union agreement or closed shop and to render such efforts unfair labor practices under the state law in spite of the provision of the National Labor Relations Act requiring only a majority of the employees to make an all union agreement legal.

3. In holding that solicitation and persuasion by a labor organization could be prohibited, if objected to by those solicited, upon the ground that the object of the solicitation constituted an unfair labor practice under a state law where such object was legal under the National Labor Relations Act.

4. In holding that free speech was not denied by the judgment in this case.

5. In holding that trivial incidents were effective to justify the denial of free speech contrary to the Constitution of the United States.

6. In holding that the acts in question in this case, which were denominated unfair labor practices under the state law, had no relation to interstate commerce.

7. In holding that a labor organization established as the sole bargaining agent under the National Labor Relations Act, and, not created or aided by unfair labor practices of the employer, may be prohibited from demanding, in the course of a campaign for a closed shop, the discharge of employees refusing to join or maintain their membership in such labor organization because such demand is an interference with the right, established by the state law, to refrain from collective activities.

ARGUMENT

The Wisconsin Peace Act Aims at Restoration of Individual Bargaining and is Opposed in Principle to N. L. R. A.

Local 248, petitioner union, is the exclusive bargaining agent of all production workers (with a few exceptions) employed by the Allis-Chalmers Manufacturing Company at its West Allis, Wisconsin Plant, under the National Labor Relations Act and was established as such by the National Labor Relations Board after the democratic process of a majority vote. Respondent Board made a finding that it was such exclusive bargaining representative (R. 125, Finding 2) and the Supreme Court of Wisconsin likewise stated this to be the fact (R. Opinion Wis. Supreme Court 2).

There is no contention that petitioner union came into existence through, or was at any time aided by, unfair

labor practices of the employer; nor that the majority, which established it as the exclusive bargaining representative, was obtained with the aid of unfair labor practices of the employer. Hence, the rule of

> *National Labor Relations Board vs. Electric Vacuum Cleaner Co.,* 315 U. S. 685, 694, 86 L. Ed. 795, 62 Sup. C. 846,
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> *International Association of Machinists vs. National Labor Relations Board,* 311 U. S. 72, 81, 85 L. Ed. 50, 61 Sup. C. 83,

is not involved. We have to do with a labor organization which has been created the representative of all the employees in the unit under the national law without legal grounds for questioning its status by this Court.

The whole raison d'être of the Wisconsin Peace Act, the law under which this proceeding was brought and decided, and its basic theory is to create a series of what are called "unfair labor practices" *of employees* and (by the definition of persons in the law, 111.02(1) Wisconsin Statutes) of labor organizations, which so-called unfair labor practices are similar to the unfair labor practices of the employer under National Labor Relations Act, (111.06(2)(a) to (j) and 111.06(3) set out at the end of this brief).

The basis of the National Labor Relations Act is the guarantee and protection of the rights of employees against the acts of the employer so as to equalize the otherwise unfair economic position of the individual employee as against the employer. It was sought to guarantee to workingmen the right to organization and collective bargaining by representatives of their own choosing and to guarantee the other necessary supplemental rights of concerted activity to carry out the principal purpose of vesting workingmen with the power to deal with their em-

ployer through labor unions. This is the now famous Section 7 (29 U.S.C. 157) of the National Labor Relations Act.

The Wisconsin Peace Act, Chapter 111, Laws of Wisconsin of 1939, which repealed Chapter 111, Laws of 1937, which was almost identical with the National Labor Relations Act, has added what is called a "right to refrain" from all the collective bargaining activities and other concerted action. Thus, Section 111.04 has added to the language of Section 7 of the National Labor Relations Act the following:

> "and such employees shall also have the right to refrain from any or all of such activities".

The essence of the Wisconsin Act is to establish and protect the right of the individual employee and the employer not to be interfered with in their desire to refrain from all collective bargaining and organizational activity and the usual concomitants of these activities. It is clear from the whole tenor of the Act that it was intended to check the progress of labor organizations and collective bargaining by preventing vigorous activity and persuasion by labor organizations, their leaders and their enthusiastic members in the effort to convince the unconvinced employees in their bargaining units of the advantages of collective labor activities. Hence, labor organizations, their leaders and their most active members, are the respondents in these proceedings rather than employers who are interfering with the progress of organizational activity, who are the respondents in proceedings under the National Act. Such a law whose purpose is to sanctify and protect the "right to refrain" from labor organization and to make acts of individuals—these individuals would necessarily be labor union officers and vigorous advocates of its benefits—its basic purpose is subversive of the purposes of the National Act. Unfair

labor practices of labor organizations, their officers and advocates is a contradiction in terms in the light of the basic theory of the National Labor Relations Act. While the states may under the police power interfere with the excessive exercise of rights under the National Labor Relations Act, while they may establish or guarantee liability for torts committed by means of the exercise of such rights, while they may make certain acts criminal offenses where necessary for the safety and peace of the community,

> *Milk Drivers Union vs. Meadowmoor,* 312 U.S. 275, 297, 85 L. Ed. 836, 61 Sup. C. 552,

the question arises whether they can make them unfair labor practices in a case properly under the National Labor Relations Act. To permit the states to do this frustrates the purpose of the National Labor Relations Act because employees cannot obtain the fullest enjoyment of their rights under that Act, whose basis is the encouragement and protection of labor organization, if in the struggle to obtain what the National Act guarantees them, they will commit inevitably the new so-called unfair labor practices created by the State Act. This case demonstrates just that.

It is undisputed that the Allis-Chalmers Manufacturing Company is as to a very large proportion of its business engaged in interstate commerce and that its employees are clearly within the terms of the National Labor Relations Act. Therefore, the industrial relations and the organizational activities of petitioners and of all the employees of the Allis-Chalmers are subject to the National Act.

The theory of the National Labor Relations Act is to induce industrial peace by encouraging and fostering collective bargaining. The Wisconsin Peace Pact is a

subtle attempt to secure industrial peace by retarding or preventing organization. Its basis is the doctrine that industrial peace can best be secured by individual bargaining. Hence, it establishes a "right" of refraining from obtaining or trying to obtain the benefits of the National Labor Relations Act, the infringement of which right it makes an unfair labor practice. Under this Act, given a board, created by this Act, imbued with this theory that the millenium will come from the restoration of individual bargaining and decisions such as that in the present case inevitably follow and the necessary findings to substantiate a preconceived theory readily result. Given further state courts imbued with this public policy of the state, and affirmances of such state board decisions quite as naturally follow. Thus, a considerable subversion of the National Act is accomplished and nothing but the decisions of this Court can preserve the rights of those many employees in states having these "Peace" Acts who are entitled to the benefits of the National Act.

While the findings of the Board emphasize threats of bodily harm, and, what is claimed to have been an assault upon Bohachef, which are set forth in what the Supreme Court (Opinion 13) describes as findings of evidentiary matters, the real substance of the matter is that the members of petitioner union refused to work with Bohachef because he would not restore himself to good standing in the union and they demanded that the company discharge Bohachef if he did not so restore himself. Petitioner union did not deny that it did make such demands especially as to Bohachef, whom it regarded as a disrupter, and, as to whom even the Board finds (R. 131, Finding 12) that he expressed forcefully his reasons for not desiring to affiliate with the union.

Closed Shop Provision of State Act Contrary to N. L. R. A.

It was the policy of petitioner union during all of its existence to endeavor to obtain an all union or closed shop agreemnt from the employer. And it carried on agitation and a campaign to this end and, finally, in January, 1941 called a strike, one of the demands of which was the closed shop and the discharge of those like Imp and Bohachef who refused to join the union and worked against it.

Under the National Labor Relations Act, petitioner union, which had been established as the sole bargaining representative of the industrial unit because it had established a majority of the employees which was never questioned, had the right to demand a closed shop by virtue of this majority. Under the Wisconsin Act (111.06 (c)) it could not make such demand unless three-fourths or more of the employees in the collective bargaining unit had voted affirmatively by secret ballot in a referendum conducted by the Board to make such demand. This is another instance where the State Act attempts to deprive employees of a right guaranteed by the National Act.

The State Board in its findings and conclusions proceeds upon the presumption that this demand for a closed shop was illegal because the prerequisites of the State Act had not been complied with. Of course, these employees had the right to quit their employment at any time and they had the right to do so for any reason including the reason that they did not wish to work with those who were not members of the union and opposed it and they had the right to quit their employment in concert. The Wisconsin Supreme Court held that Section 111.06(2)(e) does not forbid an employee to quit his employment singly or in concert with others.

Hotel Employees vs. Wisconsin Employment Relations Board, 236 Wis. 329, 342, 353.

Therefore, even under the Wisconsin Act, they had the right to jointly leave their employment and to threaten to do so. The demand that certain employees be discharged is nothing other than the threat that if they are not discharged those making the demand will quit their employment singly or in concert. In the latter case this would mean a strike for the closed shop as to the legality of which there can be no question today.

However, under the National Labor Relations Act a mere majority has the right to demand a contract for a closed shop. Since petitioner union unquestionably had a majority it had a right to demand a closed shop. The employer had a right, since this union and this bargaining unit were operating under the National Labor Relations Act, to grant such closed shop. It follows that the employer in a situation of this kind where the union under the terms of the Federal Statutes was entitled to demand a closed shop could discharge employees who were not members of the union. The employer agreed with this position of the union as appears from the letter written to the union (R. 126, Finding 5) in which it states that it will discharge two of the men in question and that it has asked them to resign.

The conclusion of the Board, sustained by the trial court (R. 139, 142 B) and by the Supreme Court of Wisconsin (Opinion 13(b) and 22 part "B"), that the petitioners cease and desist from attempting to induce the employer to discharge employees because they are not members of the union, is based upon Section 111.06 (2)(b) which makes it an unfair practice to coerce, intimidate or induce an employer to interfere with any of his employees in the enjoyment of their legal rights, including those guaranteed in Section 111.04 which is

the Section which establishes the so-called right to refrain from labor activities. There is here a definite interpretation by the Supreme Court of Wisconsin of the Wisconsin Act that it is an unfair labor practice for the employer, in the absence of the closed shop contract, to discharge an employee because he will not join a union and such closed shop contract must comply with the Wisconsin Act, that is, it must have been demanded by a three-fourths vote of all the employees in the bargaining unit. There is here a direct and important conflict with the provisions of the National Act, and, by the decision of the Wisconsin Supreme Court and its interpretation of the Wisconsin Statute, petitioner union is denied the rights guaranteed by the National Act. It may not demand a closed shop, it may not carry on a campaign to obtain it, it may not induce the employer to grant it and it must publish to all the employees in the bargaining unit that it will cease to endeavor to induce the employer to employ only union men and to make a contract to this effect. It is submitted that this is a clear and definite denial by the state through its statute, the interpretation of which by its Supreme Court is conclusive on this Court, of a very important and fundamental right guaranteed by the National Labor Relations Act.

The National War Labor Board, on August 28, 1943, decided in the case of Local 260 International Fur and Leather Workers Union, C.I.O. vs. Greenebaum Tanning Co. that the union was entitled to a maintenance of membership clause in its contract in spite of the fact that it had not established its right under Section 111.06 (c) by having obtained a three-fourths vote in an election by secret ballot conducted by the Wisconsin Board. The decision is not yet published. In the opinion by Dean Wayne L. Morse, the following is quoted in the press:

"The Supreme Court made it clear that if a state act purports to work a forfeiture of the rights granted by

the national labor relations act, such portion of the state act is a nullity."

Organizational Activities Are Described in Terms of Coercion.

The acts which are found by the Board to constitute coercion and intimidation are really concerted activities and organizational efforts protected by National Labor Relations Act.

The findings of fact of the Board (R. 125) are largely general conclusions of law. Finding 6 (R. 127) recites that it is and has been the policy of appellants "to compel" all employees in the collective bargaining unit represented by them to become and remain members in good standing. The word "compel" like the other words used in the findings hereinafter referred to is a characterization reflecting the opinion of the Board. No specific facts are given which would afford the basis for the use of this conclusion of law.

Finding 7 (R. 128) recites that, in order to carry out such policy, and for the purpose of "coercing and intimidating" employees to cooperate with the union against the will of such employees, the union and its officers and many of its members carried on a course of "coercion and intimidation" against Imp and Bohachef to compel them to join the union and pay dues as a condition of retaining employment. Again, general terms showing the conclusion of the Board and phrased in language to bring it within the terms of the unfair labor practices in Section 111.06 are used. The language is still familiar from the days before modern labor legislation when it was commonly used to characterize conduct of labor organizations in exercising their tactics and using their weapons, especially picketing, in labor disputes. Thus, picketing when used by numbers was generally character-

ized as intimidation and coercion because of the numbers using it. Since that time we have come a long way to recognizing that the application of democratic methods and weapons by working men in their struggles to obtain economic justice are not in themselves coercion and intimidation.

Thus, what was characterized as "a militant purpose, inconsistent with peaceful persuasion" and what was called "a sinister name,"

American Foundries vs. Tri-City Council, 257 U.S. 184, 205, 207;

Traux vs. Corrigan, 257 U.S. 312, 340

has become "liberty of communication which is secured to every person"

Thornhill vs. Alabama, 310 U.S. 88.

So here, the same terms are used to lend ominous significance to what when analyzed was nothing other than the use of persuasion by members of a labor organization which was attempting to exercise its rights and cause non-members to join. It has been frequently said that the exercise of these rights by a large majority cannot be considered coercion and intimidation merely because of the weight of numbers.

It is clear that the essence of what is the basis for the Board's findings and order is nothing but the concerted activities for collective bargaining or other mutual aid or protection guaranteed to employees by Section 7 of the National Labor Relations Act. That torts may have been committed, if such is the fact, does not suffice to deprive the employee of these inestimably valuable rights given by this charter of labor's freedom. Surely, merely because there was an insignificant infringement of the rights of one individual, the whole right of using their powers of persuasion to build up their organiza-

tion, which was already the bargaining representative of this entire industrial unit; their whole right to endeavor to attain 100% membership by obtaining a closed shop, could not be taken away and their privileges under the National Act forfeited by the State Board.

It has frequently been held by the National Labor Relations Board that activities such as are made the subject of the findings here, when indulged by a labor union, are "concerted activities for the purpose of collective bargaining or other mutual aid or protection" as guaranteed by Section 7 of National Labor Relations Act and do not change the status of the employees engaging in them.

Thus, work stoppages to protest layoffs come within this class.

> *United Air Craft Mfg. Co.,* I N.L.R.B. 236, 248, 1 L.R.R.M. (Labor Relations Reference Manual), 87.

Efforts by stewards to have the employees of a department limit their work hours in protest against the employer's refusal to bargain with the union.

> *Harnischfeger Corp.,* 9 N.L.R.B. 676, 3 L.R.R.M. 316.

Shutting off power in a department to protest discharges.

> *Firestone & Rubber Co.,* 22 N.L.R.B. 57, 6 L.R.R.M. 223, 226.

Refusal to work except upon union conditions and sympathetic walkout by remaining employees in the department.

> *Washougal Woolen Mills,* 3 N.L.R.B. 18, 6 L.R.R.M. 279.

Taking up a collection by two non-union employees for a striking union employee of their department.

Berkshire Knitting Mills, 17 N.L.R.B., 259, 5 L.R. R.M. 305, 313.

Leading work stoppages to protest unfavorable changes and working conditions.

Armour & Co., 25 N.L.R.B. 105, 6 L.R.R.M. 526.

Cudahy Packing Co., 29 N.L.R.B. No. 133, 8 L.R. R.M. 10.

See also

Republic Steel Corp. vs. N.L.R.B., 107 F. (2d) 472, 479 Cert. den. 309 U.S. 684.

N.L.R.B. vs. Stackpole Carbon Co., 105 F. (2d) 167, 174, 176 cert. den. 308 U.S. 605.

If the National Labor Relations Board is right in holding such activity to be amongst the rights guaranteed by Section 7 then such acts as those in the findings in this case cannot be unfair labor practices under a state law. No cases contrary to the decisions of the National Labor Relations Board have been found.

So Far as the State Act Forfeits Rights Given by the Federal Act it is Invalid.

This Court, in sustaining the Wisconsin Labor Peace Act, in so far as it does not conflict with the National Labor Relations Act, said the following, in

Allen-Bradley, Local vs. Wisconsin Employment Relations Board, 315 U.S. 740, 750:

"Nor is the freedom to engage in such conduct shown to be so essential or intimately related to a realization of the guarantees of the federal Act that its denial is an impairment of the federal policy. If the order of the state Board affected the status of the employees, or if it caused a forfeiture of collective bargaining rights, a distinctly different question would arise. But since no such right is affected, we conclude that this case is not basically different from

> the common situation where a State takes steps to prevent breaches of the peace in connection with labor disputes. Since the state system of regulation, as construed and applied here, can be reconciled with the federal Act and since the two as focused in this case can consistently stand together, the order of the state Board must be sustained under the rule which has long obtained in this Court. * * * It has not been shown that any employee was deprived of rights protected or granted by the federal Act or that the status of any of them under the federal Act was impaired. * * * We rest our decision on the narrow grounds indicated."

The findings here that certain acts, which, as has been shown, are merely the exercise of the right of concerted activity as guaranteed in Section 7 of the Federal Act, are unfair labor practices and, the order based upon such findings are a denial and impairment of the federal policy. It is the policy of the federal Act (29 U.S.C. 151 last paragraph) to encourage the practice and procedure of collective bargaining and to protect the full freedom of association for the purpose of negotiating the terms and conditions of employment or other mutual aid or protection. This policy cannot be carried out if acts aimed at achieving this end are made unfair labor practices by the state Act and permitted to be prohibited. Thus here acts which were a part of the organizational activity of this labor organization, which were aimed at increasing its membership and if possible enabling it to include all of the employees within its unit, are made unfair labor practices by the interpretation of the state court. They are not such under the National Labor Relations Act, because they are of a kind which are protected as furthering the purpose of the National Act.

The reasoning of the Supreme Court of Wisconsin that there is no conflict of jurisdiction because the powers of the National Board are restricted by Section 10(a) of

the National Labor Relations Act to unfair labor practices affecting commerce and the matters comprised in the orders of the Board in no way affected commerce (Opinion of the Court 5) is totally oblivious of the doctrine laid down by this Court

National Labor Relations Bd. vs. Jones & Laughlin S. Corp., (1937) 301 U.S. 1, 57 St. Ct. 615, 81 L. Ed. 983, 108 A.L.R. 1352,

Labor Board vs. Fruehauf, 301 U.S. 49,

Associated Press vs. Labor Board, 301 U.S. 58,

that the constitutional basis of the National Labor Relations Act is that its provisions prevent industrial strife and thus remove impediments to interstate commerce. All labor relations in industries engaged in interstate commerce are related to that commerce.

Furthermore, the reasoning of the Court that, because the Federal Act does not contain a provision for the so-called "right to refrain" from collective activities, therefore, a provision in a state law giving such a right is not invalid, is unsound, because, as has been shown, this so-called right is contradictory to the guarantees contained in the Federal Act. The ruling by the court that the right to solicitation may be taken away as an infringement of this right to refrain where there is objection by the one being solicited is a transparent attempt to entirely prevent persuasion since it will always be easy to obtain evidence from the convinced opponents of labor organizations that they objected to being solicited and even the unprejudiced, timid workingman usually objects at first to being solicited. The further reason given by the Court that such solicitation hindered Bohachef in his right not to join the union guaranteed to him by the State Act clearly shows the conflict of that Act with the National Act; as does the statement of the Court that the demand for the discharge of the individual respondents rendered

the entire effort at organization unlawful because the employer could not discharge these employees in the absence of a closed shop contract obtained under the provisions of the Wisconsin Act by a three-fourths majority after secret vote.

The Constitutional Right of Free Speech is Infringed by the Judgment.

This effort here to conceal the denial of the right of free speech by means of clothing the findings in language of coercion and intimidation is the same as the language of the third count of the charge in

Thornhill vs. Ala., 310 U.S. 88, 92.

This Court said in

Milk Wagon Drivers Union vs. Meadowmoor Dairies, 312 U.S. 287:

> "Still it is of prime importance that no constitutional freedom, least of all the guarantees of the Bill of Rights, be defeated by insubstantial findings of fact screening reality. That is why this Court has the ultimate power to search the records in the state courts where a claim of constitutionality is effectively made. And so the right of free speech cannot be denied by drawing from a trivial rough incident or a moment of animal exuberance the conclusion that otherwise peaceful picketing has the taint of force."

And the Court said further (p. 299):

> "Here again, the state court have not the last say. They must act in subordination to the duty of this Court to enforce constitutional liberties even when denied through spurious findings of fact in a state court."

While this is not a picketing case, and, the state law here, under the interpretation of the Court, denies rights

guaranteed by the National Labor Relations Act, in addition, it is a case in which the rather trivial incidents of what is claimed to have been the use of force, all of which was denied by many witnesses as appears from the findings of the Board itself, has been used to deny the constitutional rights to free speech and persuasion to the union and all its members.

> "Such a ban of free communication is inconsistent with the guarantee of the freedom of speech."
>
> *A. F. L. vs. Swing,* 312 U.S. 321, 325.

It is submitted that the examination of the findings by this Court will readily indicate that they were made with the purpose of bolstering up trivialities to sustain the so-called right of refraining from those collective activities which are the public policy of the national government and of giving an apparent basis for the denial of constitutional rights in the effort to destroy collective bargaining and to restore the superseded condition of individual bargaining between employer and employee.

CONCLUSION

It is respectfully submitted that it has been shown that, under the interpretation of the Wisconsin Supreme Court, the Wisconsin Peace Act has been made the instrumentality of denying to workingmen a great part of the essential rights guaranteed by Section 7 of the National Labor Relations Act, and, of preventing the successful accomplishment of the objectives which are the policy of that Act by workingmen, and that constitutional rights have been denied to workingmen individually and to their organization established as the legal instrumentality of carrying on collective bargaining by the National Law and the National Labor Relations Board in an industrial unit which is admittedly the subject of

the national legislation. It is submitted, that, to sustain the beneficent provisions and the policy of the National Labor Relations Act, and, to prevent the denial of those essential constitutional rights which have become so important to workingmen, certiorari should be granted so that the judgment of the Supreme Court of Wisconsin may be reviewed.

Respectfully submitted,

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STATUTES OF WISCONSIN

111.02 *Definitions.* When used in this chapter:
(1) The term "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, or receivers.

111.04 *Rights of Employes.* Employes shall have the right of self-organization and the right to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection; and such employes shall also have the right to refrain from any or all of such activities.

111.06 *What Are Unfair Labor Practices.*
* * * *

(2) It shall be an unfair labor practice for an employe individually or in concert with others:

(a) To coerce or intimidate an employe in the enjoyment of his legal rights, including those guaranteed in Section 111.04, or to intimidate his family, picket his domicile, or injure the person or property of such employe or his family.

(b) To coerce, intimidate or *induce* any employer to interfere with any of his employes in the enjoyment of their legal rights, including those guaranteed in Section 111.04, or to engage in any practice with regard to his employes which would constitute an unfair labor practice if undertaken by him on his own initiative.

* * * *

(3) It shall be an unfair labor practice for any person to do or cause to be done on behalf of or in the interest of employers or employes, or in connection with or to influence the outcome of any controversy as to employment relations any act prohibited by subsections (1) and (2) of this section.

(1) It shall be an unfair labor practice for an employer individually or in concert with others:

(c) To encourage or discourage membership in any labor organization, employe agency, committee, association or representation plan by discrimination in regard to hiring, tenure or other terms or conditions of employment; provided, that an employer shall not be prohibited from entering into an all-union agreement with the representatives of his employes in a collective bargaining unit, where three quarters or more of the employes in such collective bargaining unit shall have voted affirmatively by secret ballot in favor of such all-union agreement in a referendum conducted by the board. * * *